TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1889.

No. 70.

COLBERT JEFFRIES, PLAINTIFF IN ERROR,

vs.

CHARLES L. BARTLETT, EXECUTOR OF GEORGE T. BARTLETT, DECEASED.

IN ERROR TO THE SUPREME COURT OF THE STATE OF GEORGIA.

FILED SEPTEMBER 10, 1886.

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JUDD & DETWEILER, PRINTERS, WASHINGTON, OCTOBER 22, 1889.

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1 Supreme Court of the State of Georgia.

ATLANTA, GA., TUESDAY, *Jan'y* 26, 1886.

The honorable supreme court met pursuant to adjournment.

Present: Their honors James Jackson, chief justice, and Sam'l Hall and M. H. Blandford, associate justices.

The following judgment was rendered:

COLBERT JEFFRIES, Pl'ff in Error,
vs.
CHARLES L. BARTLETT, Ex'r, Def't in Error.

This case came before the court upon a transcript of the record from the superior court of Jasper county, and after argument had it is considered and adjudged by the court that the judgment of the court below be affirmed.

By the court.

BLANDFORD, *J.*, delivering the opinion:

This was an affidavit of illegality filed by pl'ff in error to an execution issued from a judgment rendered in 1861 in favor
2 of George T. Bartlett against the affiant.

The first ground alleges that affiant was adjudicated a bankrupt after the passage of the bankrupt act of 1867, and that he had obtained his discharge and that the debt of the plaintiff was thereby discharged, as the same was provable under said act, and that the land levied on had been set apart to him as an exemption in bankruptcy by the assignee and was not subject to the levy.

2nd. That the advertisement containing the levy for the sale of the land described affiant by the name of Jeffers, his real name being Jeffries.

3rd. That there was no proper description of fifty acres of the land.

1. This court has held and has continuously held that when a debt was created and a judgment obtained prior to the passage of the bankrupt act and the constitution of 1868 this created a lien on all the property of the defendant, and it was not discharged by the subse-
3 quent bankruptcy and discharge in bankruptcy of the defendant when the plaintiff did not prove his debt in that court and where no proceedings were had in that court disposing of the property of the bankrupt, except the property was set apart to the bankrupt as an exemption, and that said property was still subject to the lien of the judgment and was subject to be sold in satisfaction thereof. 39 Ga., 64; 40 *ib.*, 257; 43 *ib.*, 383; 44 *ib.*, 133; 52 *ib.*, 544–593; 53 *ib.*, 208; 55 *ib.*, 579; 56 Ga., 271; 58 Ga., 119; 60 Ga., 375; 65 Ga., 661; 69 Ga., 92, and other cases.

Whether the rule laid down be correct or not, we will adhere to the same until the Supreme Court of the United States indicate another rule to be the law.

2. Jeffers and Jeffries are *idem sonans*.

3. Whether fifty acres of land levied on (there being eight hundred acres) is sufficiently described in the advertisement of sale or not, we cannot tell, as the advertisement is not set out in the pleadings; at all events this was not sufficient to arrest the execution and sale of the property. We are inclined to think that errors in
4 an advertisement of sale of land levied on by execution cannot stop the sale by affidavit of illegality, and that the party suffering thereby will be remitted to his remedy against the officer. Judgment affirmed.

5 GEORGE T. BARTLETT *vs.* COLBERT JEFFRIES, ISAAC T. WYATT, & JNO. W. WYATT. } Levy and Illegality in Jasper Superior Court. Illegality by Colbert Jeffries. April Term, 1885.

It being made to appear to the court that since the last term of the court the plaintiff, Geo. T. Bartlett, has departed this life, testate, and that C. L. Bartlett is the legally appointed and qualified executor of the said G. T. Bartlett, ordered that said C. L. Bartlett, executor of Geo. T. Bartlett, be made party plaintiff in said case, and that the case do proceed in the name of said C. L. Bartlett, executor of Geo. T. Bartlett.

THOS. G. LAWSON,
Judge S. C. O. C.

STATE OF GEORGIA, *Jasper County.*

Be it remembered that on the 29th day of April, eighteen hundred and eighty-five, during the regular term of the superior court of said county, his hon. Thos. G. Lawson, one of the judges of the superior court of said State, then and there presiding, the case
6 of C. L. Bartlett, executor of George T. Bartlett, pl'ff in *fi. fa.*, *vs.* Colbert Jeffries, defendant in *fi. fa.*, came on to be heard, the same being a levy of said *fi. fa.* and illegality by defendant. The death of plaintiff being suggested by counsel for plaintiff, C. L. Bartlett, who represented to the court that he was the duly qualified executor of the plaintiff, was, upon motion, made a party plaintiff, and the case proceeded. The parties announcing ready, counsel for plaintiff moved to strike the illegality of defendant as being insufficient in law upon all of the grounds therein stated, which motion the court sustained, after argument had thereon; to which ruling of the court the defendant excepted. The defendant here annexes and incorporates in his bill of exceptions as a part of the same the execution offered by plaintiff, the affidavit of illegality of defendant, and the order of the court ruling out and striking his affidavit of illegality, by true copies thereof, marked A, B, & C, respectively. The defendant assigns the foregoing
7 ruling of the court, ruling out and striking his affidavit of illegality on all the grounds therein stated, which grounds are numbered 1, 2, & 3, and excepts to the same; and now, within

thirty days from the date of said trial, the defendant comes and tenders this his bill of exceptions, and asks that the same may be certified, as required by law.

KEY & PRESTON,
Att'ys for Pl'ff in Error.

GEORGIA, }
Jasper County. }

To all and singular the sheriffs of said State, Greeting:

We command you that of the goods and chattels, lands and tenements, of Colbert Jeffries, Isaac T. Wyatt, and John W. Wyatt you cause to be made the sum of one thousand dollars —— cents, principal, and the further sum of fifty-nine dollars and thirty cents, interest, up to the first day of November, 1861, and also the further sum of thirteen $\frac{65}{100}$ dollars —— cents, for cost, with interest on the principal sum from the first day of November, 1861,
8 until paid, which George T. Bartlett lately, in our superior court for said county, to wit, on the 28th day of October, 1861, recovered against Colbert Jeffries, I. T. Wyatt, and John W. Wyatt for principal, interest, and cost; and that you have the said several sums of money before the superior court on the 4th Monday in April next, to render to the said George T. Bartlett for principal, interest, and cost aforesaid, and have you then and there this writ.

Witness the Honorable Iverson L. Harris, judge of said court, this 4th day of Nov., 1861.

C. T. PRESTON, *Clerk.*

I have this day levied the within *fi. fa.* upon eight hundred and fifty acres of land, more or less, in said county, as the property of Colbert Jeffries, seven hundred and fifty acres in the possession of Colbert Jeffries and one hundred acres in possession of A. L. Sluder, adjoining lands Pleasant Banks, Mrs. William Kelly, Frank Malone, Jr., Samuel R. Smith, Jr., and B. A. Kelly and others, and have
9 given said Colbert Jeffries and A. L. Sluder, who is now in possession, written notice of this levy December 24th, 1878.

THOMAS R. PENN, *Dep. Sh'ff.*

Feb'y 4th, 1879, one hundred acres of the above land levied on, claimed by A. L. Sluder, the balance by C. Jeffries, agent for Alice Jeffries and Lou. Jeffries, and claim returned to superior court.

THOS. R. PENN, *Dep. Sh'ff.*

Levied the within *fi. fa.* on six hundred acres of land, more or less, whereon the defendant now lives, and served the defendant notice in writing of this levy this Feb'y 28th, 1873.

M. B. KEY, *Dep. Sh'ff.*

Copy of the Affidavit of Illegality, Marked B.

C. L. BARTLETT, Executor of G. T. Bartlett, Pl'ff in *Fi. Fa.*, *vs.* COLBERT JEFFRIES, Def't in *Fi. Fa.* | *Fi. fa.* Levy and Illegality.

In his own proper person comes before me Colbert Jeffries, who, being duly sworn, says that the above-stated *fi. fa.* is proceeding against him illegally upon the following grounds, to wit:

1. That seven hundred and fifty acres of his land and fifty other acres not described in the advertisement has been advertised to be sold on the first Tuesday in May instant under and by virtue of a *fi. fa.*, the same being the above-stated *fi. fa.*, purporting to have issued from the superior court of said county in favor of George T. Bartlett *vs.* one Colbert Jeffers. Deponent says that there is a *fi. fa.* against him in favor of the said George T. Bartlett, but that his said land cannot be legally sold under the said advertisement of his land under and by virtue of any *fi. fa.*—the above-stated one inclusive—against Colbert Jeffers; that his name is not Jeffers, but Jeffries.

2nd. Because that if the levy was made properly on the said land and the advertisement was intended to be based upon the levy of the *fi. fa.* of George T. Bartlett against deponent his said land cannot be lawfully sold under said *fi. fa.* now, because he says that since the date of the levy this deponent, over and against the objections of creditors, has been forever discharged from all debts and claims which by the bankruptcy laws of the United States are made provable in bankruptcy and which existed on the 24th day of May, A. D. 1873; which said discharge is hereto annexed and pleaded as a valid defense against said *fi. fa.*, and is hereby expressly made a part of this his affidavit of illegality; that said plaintiff's said *fi. fa.* is a debt that was provable in bankruptcy, and that the aforesaid discharge in the court of bankruptcy for the northern district of Georgia wholly and entirely divested the lien of the plaintiff's judgment; that said judgment has now no lien which can be enforced by the sale of his land. Deponent further avers that his assignee in bankruptcy, Augustus L. Sluder, has ascertained, set apart, and conveyed to this deponent his said land as a homestead allowed him by the said bankrupt act, and that the same is as such, since his said discharge, exempt from levy and sale under the plaintiff's said *fi. fa.*

The deponent here states that he has heretofore filed affidavits of illegality to the enforcement of the *fi. fa.* of said G. T. Bartlett against him, and also filed injunctions in the said United States district court, but neither those affidavits nor injunctions were based upon the grounds of illegality herein set forth, nor did these his present grounds of illegality exist at the time of the filing of said former affidavits and injunctions.

3. Nor did the following 3rd ground of illegality exist at the time of the filing of the said illegality and injunctions, to wit, because the said advertisement does not sufficiently describe the land levied on in this, to wit, it goes on to state that "eight hundred acres of land, more or less, in Jasper county, seven hundred and fifty acres in the possession of deponent, which last is described, but no boundaries are attempted to be given to the other fifty acres, nor is it located as adjoining the other lands, nor does it state in what part of
13 said county it is situated, so as to put purchasers on notice of what they would be purchasing at the sale.

COLBERT JEFFRIES.

Sworn to & subscribed before me this the 2d day of May, 1884.
J. H. BLACKWELL, *J. J. C. C.*

District Court of the United States, Northern District of Georgia.

In the Matter of COLBERT JEFFRIES, Bankrupt.

Whereas Colbert Jeffries, of the —— of ——, in the county of Jasper, State of Georgia, has been duly adjudge- a bankrupt under the act of Congress establishing a uniform system of bankruptcy throughout the United States and appears to have conformed to all the requirements of law in this behalf, it is therefore ordered by the court that said Colbert Jeffries be forever discharged from all debts and claims which by said act are made provable against him [his] estate and which existed on the 24th day of May, A. D.
14 1873, on which day the petition for adjudication was filed by him, excepting such debts, if any, as are by said act excepted from the operation of a discharge in bankruptcy.

Given under my hand and the seal of the court, at Atlanta, in the said district, this 19th day of April, A. D. 1884.

[L. S.] H. K. McCAY,
U. S. Judge.

I, A. E. Buck, clerk of the United States district court in and for the northern district of Georgia, do hereby certify that the above is a true copy of the original on file and remaining of record in my office.

In testimony whereof I hereunto set my hand and the seal of the said district court, at Atlanta, Ga., this the 19th day of April, A. D. 1884.

[Seal of U. S. Court.]

A. E. BUCK, *Clerk.*

On back: No. 652. In the district court of the United States for northern district of Georgia. In bankruptcy. In the matter
15 of Colbert Jeffries, bankrupt. Certified copy of discharge. Original filed in the clerk's office April 19th, 1884. A. E. Buck, clerk.

EXHIBIT C.

Judgment of the Court.

Jasper Superior Court. April Term, 1885.

Plaintiff's counsel having demurred to the within affidavit of illegality and moved to strike and dismiss the same as insufficient in law, after argument had, it is ordered that the motion be sustained, and that said affidavit be dismissed and stricken, and that the plaintiff do recover of the defendant, Colbert Jeffries, the cost to be taxed by the clerk.

THOS. G. LAWSON,
Judge S. C. O. C.

Entries on the back of the *fi. fa.*: No. 22. E. P. 796. George T. Bartlett *vs.* Colbert Jeffries. *Fi. fa.* levy and illegality. Filed in office this the 6th day of May, 1884. W. F. Jordon, clerk.

16 I certify that the bill of exceptions is true and contains all the evidence material to a clear understanding of the errors complained of, and the clerk of the superior court of Jasper county is hereby required and ordered to make out a complete copy of the record of said case and certify the same as such and cause the same to be transmitted to the September — of the supreme court that the errors alleged to have been committed may be considered and corrected. This May 2nd, 1885.

May 2, 1885.

THOS. G. LAWSON,
Judge S. C. O. C.

GEORGIA, }
Jasper County. }

I do certify that the within and foregoing is the true original bill of exceptions which was filed in my office in the case of Colbert Jeffries *vs.* C. L. Bartlett, ex'r, &c.

Given under my hand and seal of office this the 8th day of May, 1885.

[Seal of Clerk of Sup. Court, Jasper Co.]

W. F. JORDON, *Clerk S. C.*

17 GEO. T. BARTLETT
vs.
COLBERT JEFFRIES, ISAAC WYATT, & J. W. WYATT. } Levy & Illegality. Illegality by Colbert Jeffries. April Term, 1885.

It being made to appear to the court that since the last term of the court the plaintiff, Geo. T. Bartlett, has departed this life, and that C. L. Bartlett is the legally appointed and qualified executor of said Geo. T. Bartlett, ordered that said C. L. Bartlett, executor of

Geo. T. Bartlett, be made party plaintiff in said case, and that the case do proceed in the name of said C. L. Bartlett, executor of Geo. T. Bartlett.

THOS. G. LAWSON,
Judge S. C. O. C.

GEORGIA, }
Jasper County. }

To all and singular the sheriffs of said State:

We command you that of the goods and chattels, lands and tenements, of Colbert Jeffries, Isaac T. Wyatt, and John W.
18 Wyatt you cause to be made the sum of one thousand dollars, principal, and the further sum of fifty-nine dollars and thirty cents, interest up to the 1st day of Nov., 1861, and also the further sum of thirteen $\frac{65}{100}$ dollars for costs, with interest on the principal sum from the 1st day of Nov., 1861, until paid, which George T. Bartlett, lately in our superior court of said county, to wit, on the 28th day of Oct., 1861, recovered against the said Colbert Jeffries, I. T. Wyatt, and John W. Wyatt for principal, interest, and cost, and that you have the said several sums of money before the superior court on the 4th Monday in April next, to render to the said George T. Bartlett the principal, interest, and cost aforesaid, and have you then and there this writ.

Witness the Hon. Iverson L. Harris, judge of said court, this 4th day of Nov., 1861.

CHAS. T. PRESTON, *Clerk.*

Levied the within *fi. fa.* on six hundred acres of land, more
19 or less, whereon defendant now lives, this Feb'y 28th, 1873. Property pointed out by plaintiff.

M. B. KEY, *Dep. Sh'ff.*

Served defendant with notice in writing of the above levy Feb'y 28, '78.

M. B. KEY, *Dep. Sh'ff.*

Affidavit of illegality filed to this *fi. fa.*, and the same, with the *fi. fa.*, returned to the clerk of the superior court March 25th, 1873.

M. B. KEY, *Dep. Sh'ff.*

I have this day levied the within *fi. fa.* upon eight hundred and fifty acres of land, more or less, in said county as the property of Colbert Jeffries, seven hundred and fifty acres in the possession of Colbert Jeffries, and one hundred acres in possession of A. L. Sluder, adjoining lands Pleasant Banks, Mrs. Wm. Kelly, Frank Malone, Jr., Sam'l R. Smith, Jr., B. A. Kelly, and others, and have given said Colbert Jeffries and A. L. Sluder, who is now in possession, written notice of this levy.

Dec. 24, 1878.

THOS. R. PENN, *Dep. Sh'ff.*

20 Feb'y 4, 1879, one hundred acres of the above land, levied on, claimed by A. L. Sluder, the balance by C. Jeffries, agent for Alice Jeffries and Lou. Jeffries, and claims returned to the superior court.

THOS. R. PENN,
Dep. Sheriff.

Affidavit of illegality filed and papers returned to clerk's office May 6, '84.

W. J. PRESTON, *Sh'ff.*

G. T. BARTLETT
vs.
COLBERT JEFFRIES. } *Fi. Fa.* Levy & Illegality.

STATE OF GA., *County of Jasper:*

In his own proper person comes before me Colbert Jeffries, who, being duly sworn, says that the above-stated *fi. fa.* is proceeding against him illegally, upon the following grounds, to wit: 1st, that seven hundred and fifty acres of his land and fifty other acres, not described in the advertisement, has been advertised to be sold on the 1st Tuesday in May inst. under and by virtue of a *fi. fa.*, the same being the above-stated *fi. fa.*, purporting to have issued
21 from the superior court of said county in favor of Geo. T. Bartlett *vs.* one Colbert Jeffries. Deponent says that there is a *fi. fa.* against him in favor of the said George T. Bartlett, but that his said land cannot be legally sold under the said advertisement of his land, under and by virtue of any *fi. fa.*, the above-stated one inclusive, against Colbert Jeffers; that his name is not Jeffers but Jeffries. 2nd, because that if the levy was made properly on the said land and the advertisement was intended to be based upon the levy of the *fi. fa.* of George T. Bartlett against deponent his said land cannot be lawfully sold under said *fi. fa.* now, because he says that since the date of the levy this deponent, over and against the objections of his creditors, has been forever discharged from all debts and claims which, by the bankruptcy laws of the United States, are made provable in bankruptcy and which existed on the 24 day of May, A. D. 1873, which said discharge is
22 hereto annexed and pleaded as a valid defense against said *fi. fa.* and is hereby expressly made a part of this his affidavit of illegality; that said plaintiff's said *fi. fa.* is a debt that was provable in bankruptcy, and that the aforesaid discharged in the court of bankruptcy for the northern district of Georgia wholly and entirely divested the lien of the plaintiff's judgment; that said judgment has now no lien which can be enforced by the sale of his said land.

Deponent further avers that his assignee in bankruptcy, Augustus L. Sluder, has ascertained, set apart, and conveyed to this deponent his said land as a homestead allowed him by the said bankrupt act, and that the same is as such, since his said discharge, exempt from levy and sale under the plaintiff's said *fi. fa.* This deponent here states

that he has heretofore filed affidavits of illegality to the enforcement of the *fi. fa.* of the said George T. Bartlett against him, and also filed injunctions in the United States district court, but neither
23 those affidavits nor injunctions were based upon the grounds of illegality herein set forth, nor did these his present grounds of illegality exist at the time of the filing of said former affidavits and injunctions, nor did the following 3rd ground of illegality exist at the time of the filing of the said illegality and injunctions, to wit, because the said advertisement does not sufficiently describe the land levied on in this, to wit, it goes on to state that eight hundred acres of land, more or less, in Jasper county, seven hundred and fifty acres in the possession of deponent, which last is described, but no boundaries are attempted to be given to the other fifty acres nor is it located as adjoining the other land, nor does it state in what part of said county it is situated so as to put purchasers on notice of what they would be at the sale buying.

COLBERT JEFFRIES.

Sworn to and subscribed before me this the 2 day of May, 1884.
JOHN H. BLACKWELL, *J. J. C. C.*

24 Jasper Superior Court. April Term, 1885.

Plaintiff's counsel having demurred to the within affidavit of illegality and *and* moved to strike and dismiss the same as insufficient in law, after argument had it is ordered that the motion be sustained and that said affidavit be dismissed and stricken, and that the plaintiff do recover of the defendant, Colbert Jeffries, the costs, to be taxed by the clerk.

THOS. G. LAWSON,
Judge S. C. O. C.

District Court of the United States, Northern District of Georgia.

In the Matter of COLBERT JEFFRIES, Bankrupt. In Bankruptcy.

Whereas Colbert Jeffries, in the county of Jasper, State of Georgia, has been duly adjudged a bankrupt under the act of Congress establishing a uniform system of bankruptcy throughout the United States, and appears to have conformed to all the requirements of law in that behalf, it is therefore ordered by the court that said Colbert Jeffries be forever discharged from all debts and claims which by said act are made payable against him [his] estate
25 and which existed on the 24th day of May, A. D. 1873, on which day the petition for adjudication was filed by him, excepting such debts, if any, as are by said act excepted from the operation of a discharge in bankruptcy.

Given under my hand and the seal of the court, at Atlanta, in the said district, this 19th day of April, A. D. 1884.

[SEAL.] H. K. McKAY,
U. S. Judge.

I, A. E. Buck, clerk of the United States district court in and for the northern district of Georgia, do hereby certify that the above is a true copy of the original on file and remaining of record in my office.

In testimony whereof I hereunto set my hand and the seal of the said district court, at Atlanta, Ga., this the 19th day of April, A. D. 1884.

[SEAL.] A. E. BUCK, *Clerk.*

GEORGIA,)
Jasper County.)

I do hereby certify that the foregoing pages are a true and complete transcript of the record in the case of Colbert Jeffries, plaintiff in error, *vs.* G. T. Bartlett, defendant in error.

26 Given under my hand and seal of office this Jan'y 13, 1886.

[SEAL.] W. F. JORDAN, *Clerk.*

27 CLERK'S OFFICE, SUPREME COURT OF GEORGIA,
ATLANTA, GA., *Sept.* 4, 1886.

I hereby certify that the foregoing pages hereto attached contain true and complete copies of the judgment and opinion of the supreme court of the State of Georgia in the case of Colbert Jeffries, pl'ff in error, *vs.* Charles L. Bartlett, executor, defendant in error, and of the original bill of exceptions and transcript of the record in said case, as appears from the records and files of this office.

Witness my signature and the seal of said supreme court hereto affixed the day and year above written.

[Seal Supreme Court of the State of Georgia.]

Z. D. HARRISON,
Clerk Supreme Court of Georgia.

28 UNITED STATES OF AMERICA:

COLBERT JEFFRIES
versus
CHARLES L. BARTLETT, as Executor of George T. Bartlett, Deceased. } Error from the Superior Court of Jasper County, Georgia.

To the supreme court of Georgia:

The petition of Colbert Jeffries, of said county and State, respectfully shows as follows: During the April term, 1885, of the superior court of Jasper county, Georgia, there came on to be tried before the Honorable Thomas G. Lawson, judge of the superior courts of the Ocmulgee circuit, presiding in said county, the case of Charles L. Bartlett, as executor of George T. Bartlett, deceased, against Colbert Jeffries, which case arose in the following manner: An execution in favor of George T. Bartlett against Colbert Jeffries, Isaac T. Wyatt, and John W. Wyatt, dated the fourth day of November, A. D. eighteen hundred and sixty-one, for the sum of one thousand dollars principal, fifty-nine dollars and thirty cents interest, and thir-

teen dollars and sixty-five cents costs, was levied on the twenty-fourth day of December, A. D. eighteen hundred and seventy-eight, on a certain tract of land in said county, as the property of said Colbert Jeffries, as will appear by the sheriff's entry of said levy in the record. To this levy the said Jeffries interposed an affidavit of illegality, alleging the following reasons why said execution should not proceed against said property:

29 (1.) Because the advertisement published under said levy did not sufficiently describe all of the land levied on.

(2.) Because since the issuance of said execution the said Jeffries has become a bankrupt, has been duly so adjudged under the bankrupt laws enacted by the Congress of the United States in 1867 and the amendments thereof, and has been discharged from all debts provable in bankruptcy which existed on May the twenty-fourth, A. D. eighteen hundred and seventy-three, the date of the said adjudication in bankruptcy, a copy of the order of discharge, duly certified, being attached to the affidavit of illegality; and it was alleged that the debt now sought to be enforced was one provable in bankruptcy, and therefore was discharged; and thus a right, privilege, and immunity were set up and claimed by petitioner for himself under the bankrupt laws of the United States, and especially a construction of section 5119 of the Revised Statutes of the United States.

(3.) Because the land now levied on was duly set apart to said Jeffries as an exemption in bankruptcy by his assignee, A. L. Sluder, and by reason of said exemption and setting apart said land is not subject to levy and sale under said execution, but is exempted to said Jeffries under the bankrupt laws of the United States, to wit, the bankrupt acts passed by Congress in eighteen hundred and sixty-seven, and the amendment thereto, enacted in eighteen hundred and seventy-three, providing for the setting apart of exemptions in bankruptcy and the exemption of the same from levy and sale; and thus a right, privilege, immunity, and exemption were claimed by this petitioner for himself under the bankrupt laws of the United

30 States, and a construction thereof and a consideration of their validity and effect (especially Revised Statutes of the United States, section 5045) were involved.

(4.) Because the property levied on was advertised for sale as the property of Colbert Jeffers, and the name of the defendant is Colbert Jeffries.

The plaintiff, George T. Bartlett, having died, his executor, Charles L. Bartlett, was made a party in his stead by order of court.

Upon the call of said case counsel for the plaintiff demurred to the said affidavit of illegality *ore tenus* and moved to strike the same as insufficient in law, although the facts therein stated were true, whereupon the presiding judge sustained said demurrer and dismissed said affidavit of illegality, and adjudged that the plaintiff should recover of the defendant the costs in said case, and said judgment, under the laws of the State of Georgia, had the effect to adjudge that the said execution should proceed to subject the said land,

and that the same should be sold thereunder, notwithstanding the facts alleged in said affidavit of illegality.

To the aforesaid judgment, dismissing and overruling said affidavit of illegality, the defendant, Colbert Jeffries, excepted and by writ of error carried the case to the supreme court of the State of Georgia, in order that the errors committed by the court below might be considered and corrected. Said case came on regularly to be heard in said supreme court of the State of Georgia during the continuance of its October term, eighteen hundred and eighty-five,
31 and after hearing argument upon the merits of said case, to wit, upon the grounds of the affidavit of illegality aforesaid, the said supreme court of Georgia sustained and affirmed the judgment of the court below, and held that the debt of the plaintiff having been created prior to the bankrupt act of eighteen hundred and sixty-seven and the State constitution of Georgia, adopted in eighteen hundred and sixty-eight, whereby the amount of property which could be exempted from levy and sale by the State laws was increased from the amount previously allowed, as appears in the Code of Georgia, section 2040 and following sections, so as to allow the sum of two thousand ($2,000) dollars in realty and one thousand ($1,000) dollars in personalty; that therefore the subsequent bankruptcy and discharge of the defendant did not discharge the judgment of the plaintiff, he not having proved his debt in the court of bankruptcy; and also that the exemption and setting apart of the said property by the assignee in bankruptcy of the defendant did not operate to exempt said property from levy and sale under the execution of the plaintiff, but that the said exempted property was, in spite of said setting apart and exemption, subject to levy and sale under the execution of the plaintiff, because the same was obtained prior to the passage of the bankrupt act of eighteen hundred and sixty-seven and the said State constitution increasing the amount of exemption allowed by the State law as aforesaid. Said court held further that "Jeffers" and "Jeffries" were *idem sonans*. Said court still further held that the ground of the affidavit of illegality which set out the insufficiency of the advertisement was not itself sufficient to arrest the execution from proceeding to sell the property. Said final decision was rendered by the said supreme court of the State of Georgia on the twenty-sixth day of January, A. D. eighteen hundred and eighty-six.

32 And now, during the continuance of the said October term, eighteen hundred and eighty-five, of the said supreme court of Georgia, to wit, on the first day of February, A. D. eighteen hundred and eighty-six, comes the said Colbert Jeffries, by his attorneys-at-law, Key & Preston and J. H. Lumpkin, and excepts to the aforesaid judgment of the said supreme court of Georgia, and says that the same was and is erroneous, and he specifically alleges error in the decision of the said supreme court of Georgia as follows:

(1.) Because the said supreme court of Georgia affirmed the judgment of the said superior court of Jasper county, Georgia. This defendant alleges that the judgment of the said superior court was

erroneous and that its affirmance by the said supreme court also was erroneous.

(2.) Because the said supreme court of the State of Georgia erred in holding and ruling that where an execution was issued in 1861, being prior to the passage of the bankrupt act of the United States enacted by Congress in 1867 and prior to the State constitution of Georgia, adopted in 1868, whereby the amount of exemption previously allowed by the State law (as set out in the Code of the State of Georgia, section 2040, and sections immediately following) was increased, therefore the adjudication in bankruptcy of the defendant and his subsequent discharge therein did not operate to discharge the judgment and execution issued thereon held by the plaintiff, but that the same was a valid and subsisting execution which could be enforced against the defendant's property in spite of said ad-
33 judication and discharge in bankruptcy. This defendant says that this ruling and decision were erroneous and were contrary to the provisions of the act of Congress, as appears in the Revised Statutes of the United States, sections 5119, 5118, 5117.

(3.) This defendant assigns error further because the said supreme court of Georgia erred in ruling and deciding that the adjudication in bankruptcy of said defendant and the setting apart to him by his assignee in bankruptcy of the land in controversy did not operate to free said land or exempt the same from levy and sale under the execution held by the plaintiff, but that, in spite of said setting apart of said land as an exemption in bankruptcy and said adjudication and discharge of said defendant, said land, nevertheless, was subject to levy and sale under the plaintiff's execution because the same was issued in 1861, prior to the passage of the bankrupt law of the United States enacted in 1867 and the adoption of the State constitution of Georgia in 1868, as hereinbefore set out. This defendant says that said ruling and decision were erroneous and in conflict with the letter and spirit of the bankrupt act of 1867 and the amendments thereof in 1872–'3, as appears in the Revised Statutes of the United States, section 5045.

(4.) Because the said supreme court of Georgia erred in holding and deciding that "Jeffers" and "Jeffries" are *idem sonans*.

(5.) Because the said supreme court of Georgia erred in holding and deciding that the allegations in the affidavit of illegality in respect to the insufficiency of the advertisement would not warrant the sustaining of said affidavit of illegality.

34 The execution, entry of levy, affidavit of illegality, order making Charles L. Bartlett, as executor, the party plaintiff, judgment of the superior court, exception thereto, and decision of the supreme court will fully appear by reference to the record in this case, which is of file in the clerk's office of said supreme court of Georgia.

Said defendant (your petitioner) shows that he has been greatly damaged by said decision, and he prays that a writ of error may be granted to him requiring the record in said case to be transmitted to the Supreme Court of the United States, at Washington city, in the District of Columbia, that the errors above set out may be con-

sidered and corrected, and the judgment of the supreme court of Georgia may be reversed by the said Supreme Court of the United States.

KEY & PRESTON,
J. H. LUMPKIN,
Attorneys for Colbert Jeffries, Plaintiff in Error.

35 Supreme Court of Georgia.

ATLANTA, GEORGIA, *February 1st*, 1886.

The foregoing application for writ of error read and approved as true and correct. The writ of error is allowed and the same will issue; and upon the giving by the applicant of a bond with sufficient security in the sum of three thousand dollars, conditioned to prosecute his writ of error to effect and, if he fail to make his plea good, to answer all damages and costs which may be awarded against him in favor of the said Charles L. Bartlett, as executor of George T. Bartlett, deceased, the judgment will be superseded.

JAMES JACKSON,
Chief Justice of Supreme Court of Georgia.

36 CLERK'S OFFICE, SUPREME COURT OF GEORGIA,
ATLANTA, GA., *Sept.* 4, 1886.

I hereby certify that the foregoing pages hereto attached contain a true and complete copy of the petition filed in this office in the case therein stated on the 3rd day of Feb'y, 1886.

Witness my signature and the seal of said court hereto affixed the day and year first above written.

[Seal Supreme Court of the State of Georgia, 1845.]

Z. D. HARRISON,
Clk Supreme Court of Georgia.

37 UNITED STATES OF AMERICA, *ss:*

The President of the United States to the honorable the justices of the supreme court of the State of Georgia, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said the supreme court of the State of Georgia, before you or some of you, being the highest court of law or equity of the said State in which a decision could be had in the said suit between Colbert Jeffries, plaintiff in error, and Charles L. Bartlett, as executor of George T. Bartlett, deceased, defendant in error, wherein was drawn in question the construction of a statute of the United States and a discharge of the execution originally issued in favor of the said decedent, and which was proceeding in favor of the said defendant in error by levy upon the land of the plaintiff in error, said discharge being claimed by reason of the discharge of the plaintiff in error in bankruptcy under the bankrupt laws of the United States; and also the exemption of the

property levied on from levy and sale by reason of having been set apart to the plaintiff in error as an exemption under the bankrupt laws of the United States, and the decision was against the title, right, privilege, or exemption specially set up or claimed under said statute, a manifest error hath happened to the great damage of the said Colbert Jeffries, as by his complaint appears:

We, being willing that error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment therein be given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning
38 the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington, D. C., on the second Monday in October next, in the said Supreme Court to be then and there held, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and custom of the United States should be done.

Seal U. S. Circuit Court, N. D. Georgia.

Witness the Honorable Morrison R. Waite, Chief Justice of the said Supreme Court of the United States, the first day of February, in the year of our Lord one thousand eight hundred and eighty-six.

A. E. BUCK,
Clerk of the Circuit Court of the United States for the Northern District of Georgia.

Allowed by—
JAMES JACKSON,
Chief Justice of the Supreme Court of Georgia.

39 [Endorsed:] Original writ of error. Filed in office Feb'y 3, 1886. Z. D. Harrison, cl'k S. C. Ga.

CLERK'S OFFICE, SUPREME COURT OF GEORGIA,
ATLANTA, GA., *Sept.* 4, 1886.

I hereby certify that the foregoing pages hereto attached contains the original writ of error filed in this office Feb'y 3, 1886, in the case therein stated.

Witness my signature and seal of the said supreme court hereto affixed the day & year first above written.

[Seal Supreme Court of the State of Georgia, 1845.]

Z. D. HARRISON,
Cl'k Supreme Court of Ga.

40 COLBERT JEFFRIES, Plaintiff in Error,
vs.
CHARLES L. BARTLETT, as Executor of George T. Bartlett, Deceased, Defendant in Error.

The United States of America to Charles L. Bartlett, as executor of George T. Bartlett, deceased, Greeting:

You are hereby cited and admonished to be and appear at a Su-

preme Court of the United States, to be holden at Washington, D. C., on the second Monday of October next, pursuant to a writ of error filed in the clerk's office of the supreme court of Georgia, wherein Colbert Jeffries is plaintiff in error and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error, as in the said writ of error mentioned, should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable James Jackson, chief justice of the supreme court of the State of Georgia, this third day of February, in the year of our Lord one thousand eight hundred and eighty-six.

[Seal Supreme Court of the State of Georgia, 1845.]

Z. D. HARRISON,
Clerk Supreme Court of Ga.

JAMES JACKSON,
Chief Justice of Supreme Court of Georgia.

41 [Endorsed:] Colbert Jeffries, pl'ff in error, *vs.* Charles L. Bartlett, def't in error. Citation. Filed in office Feb'y 3rd, 1886. Z. D. Harrison, cl'k S. C. Ga.

Due and legal service of within citation and of the writ of error on which it is issued acknowledged & any & all other or further service waived this 17th day of March, 1886.

CHARLES L. BARTLETT,
As Executor of Geo. T. Bartlett, Deceased.

CLERK'S OFFICE, SUPREME COURT OF GEORGIA,
ATLANTA, GA., *Sept. 4th*, 1886.

I hereby certify that this half sheet of paper contains the original citation filed in this office Feb'y 3, 1886, in the case therein stated.

Witness my signature and the seal of said supreme court hereto affixed the day & year first above written.

[Seal Supreme Court of the State of Georgia, 1845.]

Z. D. HARRISON,
Cl'k Supreme Court of Ga.

42 STATE OF GEORGIA, *County of Jasper:*

Know all men by these presents that Colbert Jeffries, of said county and State, as principal, and James Benton, also of said county and State, as surety, are held and bound unto Charles L. Bartlett, as executor of George T. Bartlett, deceased, in the penal sum of three thousand ($3,000) dollars, subject to the following condition:

Whereas a *fi. fa.* in favor of George T. Bartlett was levied on a certain tract of land in said county as the property of said Colbert Jeffries, and said Jeffries interposed an affidavit of illegality to said levy, which came on to be heard in the superior court of said county at its April term, 1885, and upon the hearing the presiding judge dismissed and struck said affidavit of illegality and rendered judgment in favor of the plaintiff; and whereas the said George T. Bartlett having died pending the case the said Charles L. Bartlett, as his

executor, was made a party thereto in his stead; and whereas the said Jeffries excepted to said ruling and carried said case to the supreme court of the State of Georgia, and there the ruling of the said judge of the superior court was sustained and affirmed, and said Colbert Jeffries is proceeding, as provided by law, to carry said case to the Supreme Court of the United States by writ of error for the purpose of reviewing and reversing the ruling of the said supreme court of Georgia:

Now, the condition of this bond is that the said Colbert Jeffries shall prosecute his said writ of error to effect and if he fails to make his plea good that he shall answer all damages and costs which may be awarded against him in favor of the said Charles
43 L. Bartlett, as executor aforesaid.

In witness whereof the said principal and the said surety have hereunto set their hands and affixed their seals on this *Feb'y* 2 day of February, A. D. 1886.

COLBERT JEFFRIES. [SEAL.]
JAMES BENTON. [SEAL.]

Attest: W. F. JORDAN,
[SEAL.] *Clerk Sup. Court, Jasper Co., Ga.*

44 STATE OF GEORGIA, *County of Jasper:*

Personally appeared before me James Benton, the surety signing the above and foregoing bond, and on oath states that *they are* worth the sum of three thousand ($3,000) dollars over and above all liabilities and over and above the exemptions allowed by the law.

JAMES BENTON.

Sworn to and subscribed before me on this 2nd day of February, A. D. 1886.

[SEAL.] W. F. JORDAN,
Clerk Sup. Court, Jasper Co., Ga.

The requirements of law having been complied with, the foregoing supersedeas bond approved and ordered to be filed.

Feb. 3rd, 1886.

JAMES JACKSON,
Chief Justice of Supreme Court of Georgia.

45 CLERK'S OFFICE, SUPREME COURT OF GEORGIA,
ATLANTA, GA., *Sept.* 4, 1886.

I hereby certify that the foregoing pages hereto attached contain a true & complete copy of the bond filed in this office in the case therein stated on the 3rd day of Feb'y, 1886.

Witness my signature and the seal of said court hereto affixed the day and year above written.

[Seal Supreme Court of the State of Georgia, 1845.]

Z. D. HARRISON,
Cl'k Supreme Court of Georgia.

46 UNITED STATES OF AMERICA:

COLBERT JEFFRIES *versus* CHARLES L. BARTLETT, as Executor of George T. Bartlett Deceased.	Writ of Error from the Supreme Court of Georgia to the Supreme Court of the United States.

And now comes Colbert Jeffries, the plaintiff in error in said case, by his attorneys-at-law, Key & Preston and J. H. Lumpkin, and having obtained and filed his writ of error therein, returnable to the October term, eighteen hundred and eighty-six, of the Supreme Court of the United States, assigns the following errors in the judgment and decision of the supreme court of Georgia, the same being a final judgment of the court of last resort of said State:

(1.) Because the said supreme court of Georgia erred in affirming the judgment of the said superior court of Jasper county, Georgia, holding that the affidavit of illegality filed by said plaintiff in error was insufficient, and that the property levied on was subject to levy and sale, notwithstanding the facts in said affidavit of illegality set out. Plaintiff in error says that this was contrary to the bankrupt law of the United States enacted in 1867 and the amendments thereof.

(2.) Because the said supreme court of the State of Georgia erred in deciding that where an execution was issued in 1861, being prior to the passage of the bankrupt act of the United States enacted
47 in 1867 by Congress and prior to the State constitution of Georgia, adopted in 1868, whereby the amount of exemption previously allowed by the State law (as set out in the Code of Georgia, section 2040 and sections immediately following) was increased, therefore the adjudication in bankruptcy of the defendant and his subsequent discharge therein did not operate to discharge the judgment and execution issued thereon held by the plaintiff, but that the same was a valid and subsisting execution, which could be enforced against the defendant's property in spite of said adjudication and discharge in bankruptcy. This defendant says that this was erroneous and was contrary to the provisions of the act of Congress, as appears in the Revised Statutes of the United States, sections 5119, 5118, 5117.

(3.) This defendant assigns error further because the said supreme court of Georgia erred in deciding that the adjudication in bankruptcy of said defendant and the setting apart to him by his assignee in bankruptcy of the land in controversy did not operate to free said land or exempt the same from levy and sale under the execution held by the plaintiff, but that in spite of said setting apart of said land as an exemption in bankruptcy and said adjudication and discharge of said defendant said land nevertheless was subject to levy and sale under the plaintiff's execution because the same was issued in 1861, prior to the passage of the bankrupt law of the United States enacted in 1867 and the adoption of the State constitution of Georgia in 1868, as hereinbefore set out. This defendant says that said decision was erroneous and in conflict with the letter and spirit of the bankrupt law of 1867 and the amendments thereof in 1872-'3,

as appears in the Revised Statutes of the United States, section 5045.

48 (4.) Because the said supreme court of Georgia erred in deciding that "Jeffers" and "Jeffries" are *idem sonans*.

(5.) Because the said supreme court of Georgia erred in deciding that the allegations in the affidavit of illegality in respect to the insufficiency of the advertisement would not warrant the sustaining of said affidavit of illegality.

And petitioner prays that the judgment of the said supreme court of Georgia may be reversed.

KEY & PRESTON,
J. H. LUMPKIN,
Attorneys for Plaintiff in Error.

49 [Endorsed:] No. —. Supreme Court of the United States. October term, 1886. Colbert Jeffries, pl'tf in error, *v.* Chas. L. Bartlett, as executor, &c., def't in error. Writ of error from the supreme court of Ga. Original assignments of error. Filed in office Feb'y 3, 1886. Z. D. Harrison, cl'k S. C. Ga. Key & Preston, J. H. Lumpkin, att'ys for pl'tf in error.

CLERK'S OFFICE, SUPREME COURT OF GEORGIA,
ATLANTA, GA., *Sept.* 4, 1886.

I hereby certify that the foregoing pages hereto attached contain the true, original assignments of error filed in this office Feb'y 3, 1886, in the case therein stated.

Witness my signature and the seal of said supreme court hereto affixed the day and year above written.

[Seal Supreme Court of the State of Georgia, 1845.]

Z. D. HARRISON,
Clk S. C. Ga.

Endorsed on cover: Georgia supreme court. No. 70. Colbert Jeffries, plaintiff in error, *vs.* Charles L. Bartlett, executor of George T. Bartlett, deceased. Filed September 10, 1886.

In the Supreme Court of the United States.

COLBERT JEFFRIES
vs.
CHARLES L. BARTLETT,
Executor of Geo. T. Bartlett, deceased.

Writ of Error from the Supreme Court of Georgia.

BRIEF FOR PLAINTIFF IN ERROR.

The Constitution Job Office, Atlanta.

COLBERT JEFFRIES vs. CHARLES L. BARTLETT, Executor of Geo. T. Bartlett, deceased.	In the Supreme Court of the United States. Writ of error from the Supreme Court of Georgia.

BRIEF FOR PLAINTIFF IN ERROR.

On November 4th, 1861, an execution issued from the Superior Court of Jasper county, Georgia, based on a judgment rendered on the 28th day of October, 1861, in favor of Geo. T. Bartlett against Colbert Jeffries, I. T. Wyatt and John W. Wyatt, for the sum of $1,000 principal, $59.30 interest, and costs. An entry of levy on six hundred acres of land, more or less, was made by the sheriff in 1873, which was arrested from proceeding further by an affidavit of illegality. On December 24th, 1878, the Sheriff of Jasper county again entered a levy in the following terms: "I have this day levied the within *fi. fa.* upon eight hundred and fifty acres of land, more or less, in said county, as the property of Colbert Jeffries, seven hundred and fifty acres in the possession of Colbert Jeffries, and one hundred acres in possession of A. L. Sluder, adjoining lands, Pleasant Banks, Mrs. William Kelly, Frank Malone, Jr., Samuel R. Smith, Jr., B. A. Kelly, and others, and have given said Colbert Jeffries and A. L. Sluder, who is now in possession, written notice of this levy. December 24th, 1878. (Signed) Thomas R. Penn, Deputy Sheriff."

The one hundred acres was claimed by Sluder and the claim returned for trial.

The remaining 750 acres being subseqnently advertised for sale, Jeffries interposed an affidavit of illegality. (This

is a proceeding under the Georgia law to arrest a levy and sale where a *fi. fa.* is proceeding illegally for any reason.

"When an execution against the property of any person shall issue illegally, or shall be proceeding illegally, and such execution shall be levied on property, such person may make oath in writing, and shall state the cause of such illegality," etc. This is then returned for trial. If the property is personalty, the defendant may give a forthcoming bond, and retain possession, or not, at his option. realty, this is unnecessary. Code of Georgia of 1882, §§ 3664, 3666, 3672; 53 Ga. Rep., 43, 568.)

The grounds of illegality were as follows:

(1) "That 750 acres of his land and 50 other acres not described in the advertisement, have been advertised to be sold on the first Tuesday in May, inst., under and by virtue of a *fi. fa.*, the same being the above stated *fi. fa.* purporting to have issued from the Superior Court of said county, in favor of Geo. T. Bartlett against one Colbert Jeffries. Deponent says that there is a *fi. fa.* against him in favor of the said Geo. T. Bartlett, but that his said land cannot be legally sold under the said advertisement of his land, under and by virtue of any *fi. fa.*, the above stated one inclusive (included), against Colbert Jeffers; that his name is not Jeffers but Jeffries."

(2) "Because that, if the levy was made properly on the said land, and the advertisement was intended to be based upon the levy of the *fi. fa.* of Geo T. Bartlett against deponent, his said land cannot be lawfully sold under said *fi. fa.* now, because he says that since the date of the levy this deponent, over and against the objections of creditors, has been forever discharged from all debts and claims, which by the bankruptcy laws of the United States are made provable in bankruptcy, and which existed on the 24th day of May, 1873, which said discharge is hereto annexed and pleaded as a valid defence against said *fi. fa.*, and is hereby expressly made a part of this, his affidavit of

illegality. That said plaintiff's said *fi. fa.* is a debt that was provable in bankruptcy, and that the aforesaid discharge in the court of bankruptcy for the Northern District of Georgia wholly and entirely divested the lien of the plaintiff's judgment. That said judgment has now no lien which can be enforced by the sale of his said land.

"Deponent further avers that his assignee in bankruptcy, Augustus L. Sluder, has ascertained, set apart and conveyed to this deponent his said land as a homestead allowed him by the said bankrupt act, and that the same is, as such, since his said discharge, exempt from levy and sale under the plaintiff's said *fi. fa.*"

(It is then stated that affidavits of illegality had previously been filed, and an injunction obtained, but neither of them included or were based upon the grounds of illegality now set up because such grounds did not then exist.)

(3) Because the advertisement under the levy does not sufficiently describe the land levied on, in this, to-wit: "It goes on to state that '800 acres of land, more or less, in Jasper county—750 acres in the possession of deponent,' which last is described, but no boundaries are attempted to be given to the other fifty acres, nor is it located as adjoining the other land, nor does it state in what part of said county it is situated, so as to put purchasers on notice of what they would be purchasing at the sale."

(Attached to the affidavit of illegality was a certified copy of the discharge in bankruptcy of Jeffries, dated April 19, 1884, the adjudication having been made on May 24, 1873.)

Geo. T. Bartlett, the plaintiff in *fi. fa.*, having died, his executor, Chas. L. Bartlett, was made a party in his stead.

On motion of plaintiff in *fi. fa*, in the nature of an oral demurrer, the presiding judge dismissed the affidavit of illegality, holding that the grounds set out therein were not sufficient to prevent the execution from proceeding to

sell the land. To this judgment Jeffries excepted, and carried the case to the Supreme Court of Georgia. On January 26th, 1886, the Supreme Court of Georgia, after argument, rendered a decision affirming the judgment of the court below. To this decision and judgment Jeffries excepted, and brought the case to the Supreme Court of the United States. He assigned error, and now assigns error on the following grounds:

(1) Because the Supreme Court of Georgia affirmed the judgment of the Superior Court of Jasper county. He alleges that the judgment of said Superior Court was erroneous, and its affirmance was likewise erroneous.

(2) Because the said Supreme Court of the State of Georgia erred in holding and ruling that, where an execution was issued in 1861, being prior to the passage of the Bankrupt Act of the United States, enacted by Congress in 1867, and prior to the State Constitution of Georgia, adopted in 1868, whereby the amount of exemption previously allowed by the State law (as set out in the Code of the State of Georgia, §2040, and sections immediately following) was increased, therefore the adjudication in bankruptcy of the defendant and his subsequent discharge, did not operate to discharge the judgment and execution issued thereon held by the plaintiff, but that the same was a valid, subsisting execution which could be enforced against the defendant's property, in spite of said adjudication and discharge in bankruptcy. He assigns error on this ruling and decision, and says that it was contrary to the provisions of the Bankrupt Act passed by Congress, as they appear in the Revised Statutes of the United States, §§5117, 5118, 5119.

(3) Because the Supreme Court of Georgia ruled and decided that the adjudication in bankruptcy of said Jeffries, and the setting apart to him by his assignee in bankruptcy of the land in controversy as an exemption, did not operate to free said land or exempt the same from

levy and sale under the execution held by the plaintiff; but that, in spite of such setting apart of said land as an exemption in bankruptcy, and said adjudication and discharge of said Jeffries, said land was nevertheless subject to levy and sale under the execution, because the execution was issued in 1861, prior to the passage of the bankrupt law of the United States, enacted in 1867, and the adoption of the State Constitution of Georgia in 1868. This decision is assigned as error because it is in conflict with the letter and spirit of the bankrupt act of 1867 and the amendments thereof in 1872–3, as appears in the Revised Statutes of the United States, §5045.

(4) Because the Supreme Court of Georgia erred in holding and deciding that Jeffers and Jeffries are *idem sonans*.

(5) Because the Supreme Court of Georgia erred in holding and deciding that the allegations in the affidavit of illegality in respect to the insufficiency of the advertisement would not warrant the sustaining of said affidavit.

1. "A discharge in bankruptcy duly granted shall, subject to the limitations imposed by the two preceding sections, release the bankrupt from *all debts, claims, liabilities and demands* which were or might have been proved against his estate in bankruptcy."—U. S. R. S., 5119; 41 Ga., 180; 23 Wallace, 113; 20 Wallace, 251, 254.

The "limitations imposed by the two preceding sections" do not include the debt claim or demand here sought to be enforced.

In Brady, gdn., vs. Brady, 71 Ga., 71 (2, (c) 78, the Supreme Court of Georgia strongly doubted its previous rulings and reasoned to the contrary; and in Shipp vs. Smith they again doubted them, and only held the same on the doctrine of *stare decisis*.

Debts due the Sovereign—the Government—are the *only* debts not *expressly* named in the bankrupt act, that

can prevail against the discharge. 20 Wallace, 251, *et. seq.*; Justice Crawford in opin., page 627; 65 Ga.; 41 Ga., 180. Judgments are not expressly named

3. But whether or not the discharge affected the judgment, *the exemption set apart to the bankrupt* did free the land from such liability to levy and sale. The Act of Congress of 1873 expressly declares in favor of the exemption as against such a judgment.

U. S. Rev. Stats., §§5045.

Law Times No. 7, 335.

Id., No. 8, 337.

The ground on which it has been held that exemptions set apart under State laws were subject to debts contracted prior to the passage of the law, is that *States* are prohibited from passing laws impairing the obligation of contracts. (Constitution of the U. S., Article 1, Section 10, Sub-section 1.)

But this cannot and does not limit the power of *Congress* to provide for exemptions in bankruptcy, a subject specified in the same instrument as within the control of the National Legislature. Constitution of the U. S., Article 1, Section 8, Sub-section 4. *In re* Kean et al., 8 Nat. Bank Reg., 367.

In 65 Ga., 627, the Court say: "Recognizing, as we do, the superior power of Congress over the subject of bankruptcy and exemption, we are not prepared to say that an exemption, though unconstitutional when allowed by State authority, may not become constitutional when allowed by an Act of Congress, the latter being invested with the power to enact laws upon this subject which is denied to the former."

Even if the foregoing argument be erroneous, still there were in 1873, and still are in Georgia, two laws for the exemption of property, under either of which exemption from levy may be claimed. One of them antedates the

judgment involved in this case, and is based on Acts of the Legislature enacted in 1822, 1841, 1843, 1834 and 1845. (Cobb's Digest, pp. 385, 389, 390, 391, 388.) This law provides, as codified, that "the following property of every debtor, who is the head of a family, shall be exempt from levy and sale by virtue of any process whatever, under the laws of this State, nor shall any valid lien be created thereon, except in the manner hereinafter pointed out, but shall remain for the use and benefit of the family of the debtor:

"1. Fifty acres of land, and five additional acres for each of his or her children under the age of sixteen years," etc.

Compiled in Code of Ga., §2040.

The other exemption is what is termed in Georgia "the constitutional homestead." By the Constitution of 1868, realty to the value of $2,000 and personalty to the value of $1,000 could be exempted. Code of Ga. of 1873, §§5135, 2002 *et seq.* (Subsequently, in 1877, this amount was changed to $1,600).

Now the Bankrupt Act exempted whatever the State laws exempted. A State law of Georgia, *existing before this judgment was rendered*, and still in force, exempted at least a part of the land, and it was error to dismiss this ground of illegality entirely, and order the execution to proceed against the whole land. The cases relied on by defendant in error, or cited by the Supreme Court of Georgia in their decision, certainly could go no further than to hold subject the increased amount of exemption provided for by the Constitution of 1868, but not the amount exempt by the statute before the judgment was rendered.

5. "Jeffers" is not the same as "Jeffries," and an advertisement of the property of "Jeffers," is illegal.

6. An advertisement of sale of fifty acres of land, without other description, is certainly not good.

HENRY JACKSON,
For plaintiff in error.
KEY & PRESTON,
& J. H. LUMPKIN,
In lower courts.